

MISC. CIVIL APPLICATION NO. 1022 OF 1992.

Date of decision: 8.1.1996.

For approval and signature

The Honourable Mr. Justice S. M. Soni

and

The Honourable Mr. Justice R. R. Jain

Mr. R.C. Pathak, advocate for applicants.

Mr. Rajesh K. Shah and Mr. J.R. Nanavati, advocates for respondents.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.M. Soni & R.R. Jain, JJ.

-----

January 8, 1996.

Oral judgment (Per Soni, J.)

This application is filed for taking necessary action against respondents under the Contempt of Courts Act for non-compliance of the order passed by this Court in Special Civil Application No.5056 of 1991. The order passed by this Court reads as under:

"Mr. R.K. Shah has filed a pursis stating that the amount of gratuity payable to the four petitioners would be paid by eight equal monthly instalments and the first instalment would be paid on or before 15.1.1992. The third respondent is directed to file an undertaking binding to all the partners of respondent No.3 to make the payments as per the aforesaid pursis. Such written undertaking signed by all the partners to be filed within two weeks from today. If such undertaking is not filed within two weeks from today, the petition will stand allowed in terms of para 5 (a) against respondent No.3 and the entire amount of gratuity shall be payable with 18% interest from the date the gratuity amount has become payable till the amount is actually paid. In case there is any default in payment of instalments, then the entire amount with interest will become recoverable and that will be without prejudice to the proceedings for breach of the undertaking."

In the said order, it was directed to file an undertaking by the partners of respondent No.3. However, none of the partners nor respondent No.3 had filed any undertaking. As undertaking was not filed, the petition came to be allowed with the reliefs in terms of para 5 (a) against respondent No.3 and the amount was ordered to be paid with 18% interest.

The petitioner had also moved the appropriate authority for recovery of the said gratuity amount. It appears that the said authority issued a notice of demand.

Respondents are prepared to pay the said amount as per the demand notice. Unfortunately, the demand, in fact, is lower than that of the order of this Court and the respondents are prepared to pay the amount as per demand notice if the same is accepted by the petitioner in full and final settlement. In view of non-payment of the amount ordered by this court, this application came to be filed.

Rule 189 of the Gujarat High Court Rules, 1993, reads as under:

"189. Every order passed on a petition under Article 226 of the Constitution, including any order as to costs, shall be drawn up as if it were a decree and shall be executable as a decree in the manner provided in the Code of Civil Procedure."

In view of this rule, Order of this court is executable as provided in Civil Procedure Code.

In view of the observation of the Supreme Court in the case of the Alahar Co-operative Credit Service Society vs. Sham Lal, reported in 1995 (2) GLH, 550, contempt proceeding is not a substitute for execution. Hence, when the petitioner can execute the order, we would not like to exercise our powers under the Contempt of Courts Act and the application is liable to be dismissed.

In the result, application is dismissed. Rule discharged. No costs.